



April 25, 2001

Ms. Kimberley Mickelson  
Olson & Olson  
Three Allen Center, Suite 3485  
333 Clay Street  
Houston, Texas 77002

OR2001-1654

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146410.

The City of Friendswood Police Department (the “department”), which you represent, received a request for information relating to the arrest of the requestor. You assert that the requested information should be excepted from disclosure because it relates to an ongoing internal affairs investigation. However, you do not assert any exceptions to the disclosure of the requested information under subchapter C, chapter 552 of the Government Code.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state in your letter to this office that “[i]t is premature at this point to assert ... exceptions, as applicable exceptions may be different depending on the outcome of the investigation.” If an exception to disclosure of information exists at the time a request for information is made, a governmental body may assert that exception to the Office of the

Attorney General and seek to withhold the information. *See* Gov't Code § 552.301. However, if information does not fit within an exception to disclosure at the time of the request, the governmental body may not withhold the information. *See* Gov't Code § 552.301(a), (b); Open Records Decision No. 465 at 3 (1987). Here, you do not assert an exception to disclosure.<sup>1</sup> Therefore, the requested information is presumed to be open to the public. Gov't Code §§ 552.301, .302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. We note that section 552.130 of the Government Code can provide a compelling reason for overcoming the presumption of openness. However, while the requested information contains Texas license plate information that would generally be protected by section 552.130, the requestor has a special right of access to this information. Gov't Code § 552.023. Thus, we conclude that the department must release the requested information in its entirety to the requestor. *See Id.* §§ 552.021, .301, .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

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<sup>1</sup>We note that the police records specialist sent a letter to the city attorney in which the records specialist requested that the police department be allowed to withhold the requested information under section 552.108 of the Government Code. However, you have not argued to this office that section 552.108 is applicable. Therefore, we do not consider whether section 552.108 applies to the requested information.

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/rr

Ref: ID# 146410

Encl.: Submitted documents

cc: Mr. Robert Leighton Phillips  
c/o 304 North Shadowbend  
Friendswood, Texas 77546  
(w/o enclosures)